ISSUE DATE: March 15, 2000

DOCKET NO. P-442, 5321, 3167, 466, 421/CI-96-1540

ORDER GRANTING RECONSIDERATION, SETTING PRICES AND ORDERING COMPLIANCE FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Gregory Scott | Chair |
| Edward A. Garvey | Commissioner |
| Joel Jacobs | Commissioner |
| Marshall Johnson | Commissioner |
| LeRoy Koppendrayer | Commissioner |

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| In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements | ISSUE DATE: March 15, 2000<br><br>DOCKET NO. P-442, 5321, 3167, 466, 421/CI-96-1540<br><br>ORDER GRANTING RECONSIDERATION, SETTING PRICES AND ORDERING COMPLIANCE FILING |

## PROCEDURAL HISTORY

On December 2, 1996, the Commission issued its ORDER RESOLVING ARBITRATION ISSUES AND INITIATING A US WEST COST PROCEEDING in Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, and P-3167, 421/M-96-729 (Consolidated Arbitration Proceeding). In that Order the Commission established interim prices for interconnection and unbundled network elements (UNEs) in the territory served by US West Communications, Inc. (US West). The Commission also initiated the present proceeding to establish prices to replace the interim prices.

By its March 12, 1997, NOTICE AND ORDER FOR HEARING, the Commission referred to an administrative law judge (ALJ) the task of making recommendations regarding the cost of UNEs, unbundling, collocation, interconnection access operational support systems, call completion services, directory assistance, interim number portability, and related matters.

On November 18, 1998, the Commission received the Report of the ALJ (the Report). The Report recommended, among other things,

- using the HAI model to estimate US West's UNE costs,
- using the Collocation Cost Model sponsored by AT&T Communications of the Midwest, Inc. (AT&T) and MCI Communications (MCI) to estimate collocation costs,
- using the AT&T/MCI Non-Recurring Cost Model (NRCM) to estimate non-recurring costs,
- estimating the costs of special access lines on a pair-equivalent basis in the distribution plant and on a circuit-equivalent basis in the feeder plant, and
- denying recovery of operator support system (OSS) costs until US West provides competitive local exchange carriers (CLECs) non-discriminatory access to OSS interfaces.

On May 3, 1999, the Commission issued its ORDER RESOLVING COST METHODOLOGY, REQUIRING COMPLIANCE FILING, AND INITIATING DEAVERAGING PROCEEDING,

adopting the ALJ's findings. The Commission directed the parties to make a compliance filing containing costs developed in a manner consistent with those findings.

On May 24, 1999, the Minnesota Department of Public Service (now known as the Department of Commerce) (the Department) filed a Motion for Clarification and Reconsideration. The Department noted that the Commission had directed the ALJ to propose prices for network elements, interconnection, and methods of obtaining access to unbundled elements (collectively, "elements"). The ALJ recommended setting prices through the use of the HAI Model, Collocation Model and NRCM sponsored by AT&T/MCI. These models, however, do not propose prices for a variety of potential services an incumbent local exchange carrier (ILEC) might provide to a CLEC. The Department's motion contained a modified version of Exhibit 638a, a table which the Department claims reflects the catalog of elements, and the parties' positions regarding the price of each element.

On June 16, 1999, US West filed a reply to the Department's motion, and moved to strike modified Exhibit 638a.

On June 18, 1999, both AT&T Communications of the Midwest, Inc., and US West made compliance filings containing prices for unbundled network elements, non-recurring costs for UNEs, and collocation rates.

On September 14, 1999, the Commission granted the Department's request to solicit further comments on outstanding issues. On October 15, 1999, the Commission received comments from ATI (Cady), AT&T/MCI WorldCom, the Department, Hometown Solutions, Sprint, US West, and a group of competitive local exchange carriers (CLEC Group).

The Commission met to consider this matter on January 25, 2000.

## FINDINGS AND CONCLUSIONS

### I. Background

The purpose of the federal Telecommunications Act of 1996, codified at 47 U.S.C. § 151 *et seq.*, is to provide the benefits of competition to U.S. citizens by opening all telecommunications markets to competition. (Conference Report accompanying S. 652). The Act opens markets in three ways:

> (1) by requiring incumbent local exchange carriers to permit new entrants to purchase their services wholesale and resell them to customers;
>
> (2) by requiring incumbent local exchange carriers to permit competing providers of local service to interconnect with their networks on competitive terms; and
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> (3) by requiring incumbent local exchange carriers to unbundle the elements of their networks and make them available to competitors on just, reasonable, and nondiscriminatory terms.

47 U.S.C. § 251(c). Under the terms of the Act, a CLEC desiring to provide local exchange service can seek agreements with an ILEC related to interconnection with the ILEC's network, the purchase of finished services for resale, and the purchase of the incumbent's UNEs. 47 U.S.C. §§ 251(c), 252(a). If the ILEC and the CLEC cannot reach an agreement within the time frame

specified in the Act, either party may petition the State commission to arbitrate unresolved issues and to order terms consistent with the Act. 47 U.S.C. § 252(b). In particular, parties may ask the Commission to determine the total element long-run incremental cost (TELRIC) of UNEs, interconnection, and methods of obtaining access to UNEs. 47 C.F.R. §§ 51.501, 51.505. The resulting costs would represent the prices of those items.[1]

TELRIC pricing is designed to promote effective competition:

> Adopting a pricing methodology based on forward-looking economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to making meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economies of scale and scope, as well as the benefits of competition. Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adopting of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection an unbundled elements based on cost similar to those incurred by the incumbents....[2]

## II. Procedural Matters

### A. Reconsideration

The Department does not find fault with what the Commission has done in this docket; rather, the Department argues that the Commission left too much undone. The Department asks the Commission to establish appropriate rates for elements overlooked in its prior Order. While the CLECs that participated in the proceeding may not anticipate needing the overlooked elements, other CLECs may. AT&T and Cady support the Department's request.
No party opposes the Department's motion. US West acknowledges that the Commission's Order generally addressed the elements requested by AT&T and MCI. However, US West suggests that the Commission address these matters in the context of compliance filings in which US West proposes rates for various unpriced elements.

The Commission initiated this docket to set prices for US West's UNEs, unbundling, collocation,

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[1] "[W]e [the FCC] are adopting a cost-based methodology for states to follow in setting interconnection and unbundled element rates." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd 15499 (August 8, 1996) (Local Competition First Report & Order) ¶ 625.

[2] *Id.* at ¶ 679.

interconnection access operational support systems, call completion services, directory assistance, interim number portability, and related matters. The Department's request is within the docket's scope. The Commission does not see the need to defer to another context to address these matters; to the extent that US West proposes rates for these elements, the Commission will consider those proposals as well. With no party opposing the Department's request for reconsideration, the Commission will grant the request.

### B. Motion to Strike Exhibit 638a

US West moves to strike the modified Exhibit 638a attached to the Department's Motion for Clarification and Reconsideration. US West argues that many of the recommendations contained within that exhibit are unreasonable and not supported by the record. Moreover, US West claims that it has not had an opportunity to respond to the Department's positions set forth in the modified exhibit – not during cross-examination, not during briefs to the ALJ, not in response to the Department's exceptions to the Report. And again, US West notes that it has, and will, propose rates for unpriced elements in compliance filings; US West argues that those filings provide a better context in which to address the issue of pricing unpriced elements.

The Department opposes US West's motion. The Department disputes the contention that US West lacked opportunity to comment on the Department's proposals regarding unpriced elements. Moreover, the Department argues that the modified exhibit represents a visual aid setting forth the Department's understanding of the parties' positions. Since the Department does not argue that the modified exhibit constitutes evidence, US West lacks a basis for striking it.

Since the time US West moved to strike the modified exhibit, the Commission granted all parties the opportunity to comment on the Department's proposal. Therefore, the Commission finds US West's objections moot. The Commission will consider modified Exhibit 638a on the same basis as it considers any party's briefs and pleadings.

## III. Substantive Matters

### A. Unpriced Elements for Which Commission-Approved Models Provide a Price

The ALJ's Report recommended the use of the HAI Model, the NRCM and the Collocation Model; the adoption of certain assumptions as inputs to that model; and the application of that model and those inputs to determine the price of elements. The Commission adopted that report, and directed parties to make a compliance filing "setting forth the resulting rates." AT&T/MCI submitted a compliance filing setting forth the rates for the elements in which they had an interest.

But the HAI Model also provides rates for elements in which neither AT&T nor MCI have a particular interest. Specifically, it provides the cost of directed trunked transport (DS1 and DS3) per month, the cost of entrance facilities for transport (DS1 and DS3) per month, and cost of 8xx database queries per query. The Department has taken the initiative to propose that the Commission approve the use of the HAI Model for the purpose of determining the recurring cost of these "orphan" elements. No party objects. The Commission finds the proposal reasonable and will approve it.

### B. Unpriced Elements for Which Commission-Approved Models Do Not Provide a Price

In its compliance filing, US West proposed rates for a variety of "elements" for which Commission-approved models provided no price. In its Motion for Clarification and Reconsideration, the Department made its own recommendations regarding prices for these orphan elements. The Commission addresses these proposals as follows:

#### 1. Elements for Which the Department Recommended that No Price be Allowed

Parties disagree about whether and to what extent the Commission should authorize US West to charge a separate fee for ISDN extension technology and loop conditioning to a CLEC that orders a loop.

In order to provide the services of an integrated services digital network (ISDN) over a long line, a LEC may attach electronics called ISDN extension technology to the loop. Also, in order to improve voice transmission capability and gain flexibility, a LEC may add a bridge tap, loop coil or similar device to a loop. Such devices, however, diminish the loop's capacity to deliver advanced services such as ISDN or digital subscriber line (DSL). "Loop conditioning" means removing bridge taps and similar devices from the loop.[3]

US West argues that the HAI Model is designed to model the cost of providing "plain old telephone service" (POTS). It was not designed to model the cost of providing advanced services. US West built its network with loops sometimes exceeding 18,000 feet. Occasionally, US West adds ISDN extension technology or bridge taps and load coils to the line. If a CLEC seeks to provide a service for which ISDN extension technology or loop conditioning are necessary, US West argues that the CLEC should have to pay for the added service.

AT&T argues that these matters were resolved by the ALJ, whose report was adopted by the Commission. The Commission has the obligation to establish the costs of a forward-looking network; since a forward-looking network would not require ISDN extension technology or bridge taps, then the Commission should not consider them in establishing element prices. Additionally, because US West did not seek rehearing on these issues, all of US West's proposals now are untimely.

Cady and the Department join AT&T in also arguing that the cost of loops capable of supporting advanced services is already reflected in the price of other elements. They note that the cost of a loop already reflects maintenance costs, which includes loop conditioning. Additionally, the HAI Model assumes shorter loops than US West actually has. There are two aspects to this assumption: First, the HAI Model projects the need for more loops than US West actually requires. This aspect of the model tends to support costs that are higher than US West's actual costs. Second, by assuming a shorter loop length, the HAI Model assumes no need for bridge taps (and hence no need for removing them) and no need for ISDN extension technology. This aspect of the model tends to

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[3] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, __ FCC Rcd __ (November 5, 1999) (Local Competition Third Report and Order) at ¶ 172.

support costs that are lower than US West' actual costs. The financial consequences of these two aspects offset each other to an unspecified extent.

In any event, Cady and the Department argue that when a CLEC buys a loop from a LEC, it is entitled to receive a fully functioning loop. It should not have to pay extra to receive the capabilities that the loop is supposed to provide.

In response, US West acknowledges that the HAI Model incorporates maintenance expense into the cost of loops, which incorporates loop conditioning costs. But US West argues that at the time the FCC collected that data upon which the HAI Model was designed, telephone companies had little occasion to condition lines. As a result, the data underlying the HAI Model and inputs do not reflect much expense for loop conditioning. The growing popularity of advanced services has created a new demand for loop conditioning services, according to US West, but the HAI Model does not account for this new reality.

The Commission will decline to grant US West the authority to charge a stand-alone price for ISDN extension technology and loop conditioning. The FCC's definition of local loop already incorporates these two items:

> The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises.... The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, ... *attached electronics* (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and *line conditioning*.

47 C.F.R. § 51.319(a)(1) (emphasis added).

The Commission cannot conclude, on the basis of the record, that the HAI Model fails to account for the amount of loop conditioning that US West now performs. Moreover, the Commission would be disinclined to update the record of this case simply on this one issue. Costing models and inputs reflect the state of the art at a given point in time, but telecommunications technology and customer demand changes constantly.[4] Assuming communications technology and customer demand continue to change, the models and inputs approved in this docket will gradually deviate from the state of the art. As a result, the price of some elements will exceed US West's future costs, and the price of other elements will be less than US West's future costs. The Commission is reluctant to update one aspect of the case without updating all other aspects as well. This reasoning comports with traditional regulatory principles such as the test year (determining revenue requirement on the basis of costs and revenues from the same period), the matching principle (determining revenue requirement on the basis of all costs and revenues related to a given line of business), and the avoidance of single-issue ratemaking (not setting rates on the basis of one issue without also considering potentially offsetting issues).

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[4] "[The FCC] acknowledged ... the rapid pace and ever-changing nature of technological advancement in the telecommunications industry...." Local Competition Third Report and Order at ¶ 144.

In this docket, the Commission is establishing the terms of a contract that will expire in 2002. Parties will have the opportunity to advocate for these kinds of adjustments at that time.

### 2. Elements for Which the Department Recommended Using US West's Cost Model

As noted above, in its compliance filing US West proposed rates for a variety of "elements" for which the HAI Model, the Collocation Model and the NRCM generate no price. US West generated these rates from its own cost studies, which the Commission has not approved. For the following subset of these elements, the Department recommended accepting rates derived from US West's cost model, albeit using Commission-approved inputs:

- the recurring and non-recurring price of local switching for ISDN ports,
- the per-call price of directory assistance,
- the per-call price of operator services,
- the per-call price of Complete-a-Call, and
- the recurring and non-recurring price of multiplexing, except multiplexing ordered in conjunction with a USWC transport channel.

Cady opposes this proposal, noting that the Commission has not approved the use of US West's cost studies for setting rates.

US West's cost studies are virtually the only basis in the record for pricing these elements. But Cady argues that the lack of an alternative proposal does not imply acquiescence. Rather, it reflects the fact that these elements are only of interest to small CLECs, and small CLECs have not participated in this docket because they had not entered Minnesota at the time the docket began, and lack the resources to participate in this lengthy arbitration. Indeed, even if the Commission were to initiate further proceedings to establish the price of these elements, Cady suggests that small CLECs may not have the resources to participate.

As an alternative to either accepting costs generated by US West's cost studies, or immediately initiating a proceeding to establish a price for these elements, Cady proposes a middle path. The Commission could direct US West to set prices for these elements provisionally, as recommended by the Department. Then, to the extent that a CLEC considered a resulting rate unreasonable, it could launch an inexpensive, quick challenge.

Specifically, the challenger would submit a letter to the Commission, with a copy to the Department, setting forth reasonable grounds for challenging the rate. For example, the CLEC might allege that US West offered a similar element for a lower price in another state, or that another Bell Operating Company offers a similar element at a significantly lower price. The Commission could then direct US West to respond within 14 calendar days with evidence supporting the reasonableness of the rate in question. US West would have the option of accepting the CLEC's proposed rate. Otherwise, the Commission would set the matter for hearing under the Commission's expedited complaint procedures, or more informally, with the goal of resolving the dispute within two weeks.

During the hearing the Department recommended adoption of Cady's proposal.

The Commission finds Cady's proposals to be reasonable. It does not provoke immediate litigation, with its concomitant costs. But neither does it preclude the possibility of litigation if a CLEC thinks that a discrepancy in the cost of an element warrants the cost of contesting the discrepancy. And the proposal helps to lower the cost of contesting a discrepancy. The Commission will direct the parties to develop rates for the elements in question provisionally, based on US West's cost studies and Commission-approved inputs. In the event a CLEC wants to challenge the provisional rate, the CLEC may avail itself of the procedure set forth above.

### 3. Elements for Which the Department Recommended Using AT&T's Proposed Rates

In its compliance filing, AT&T proposed prices for dark fiber, and for optional ISDN port features for local switching. Regarding dark fiber, AT&T proposes the following:

- Two dark fibers, recurring price: $.002 per foot per month
- Two dark fibers with connections, recurring price: $.004 per foot per month

Regarding the port features, AT&T proposed the following:

- Optional ISDN switch port features, nonrecurring price: $.24 per service order
- Optional ISDN switch port features, recurring price: $0

AT&T justifies a $0 recurring price for optional ISDN switch port features on the grounds that US West already recovers any related costs through the nonrecurring price for the ISDN port features.

During the hearing US West asserted its opposition to the prices advanced by AT&T, but offered no argument in support of its position. US West declined to propose rates for dark fiber. The Department supports AT&T.

The Commission finds the prices proposed by AT&T to be reasonable, and will adopt them.

### 4. Elements for Which the Department Recommended Acquiring More Information

In their compliance filings, AT&T/MCI and US West each proposed non-recurring prices for a DS3 entrance facility and for a DS3 trunk for direct trunked transport. US West used its own cost studies to justify its cost because, it says, the NRCM does not provide a non-recurring price for such elements. If this assertion is true, then it is unclear to the Commission how AT&T/MCI generated their prices.

Rather than make a decision on the basis of the current record, the Commission will direct AT&T/MCI to explain how they derived their nonrecurring prices for these elements, and, if appropriate, to revise their calculation of these prices based on the changes approved in this Order.

### 1. Four-Wire Analog Loops

Analog loops consist of cable containing wires – typically two or four wires – and a Network

Interface Device (NID) which permits the loop to connect to the wiring in the end user's premises.[5] The HAI Model establishes a monthly price for two-wire analog loops and for NIDs, but not for four-wire analog loops. But the Model may provide sufficient information to permit the calculation of the cost of a four-wire loop.

At first glance, intuition suggests that the price of a four-wire analog loop might be equal to twice the price of a two-wire analog loop. However, that calculation would double-count the cost of the NID; a four-wire loop would not require two NIDs. Consequently, a more reasonable price would be equal to twice the price of a two-wire analog loop, minus the cost of the second NID.

AT&T/MCI, the Department and US West each recommend that the Commission authorize a monthly price for four-wire analog loop equal to twice the price of two-wire analog loop, less the cost of a NID. With no party opposing the proposal, the Commission finds it reasonable, and will adopt it.

## IV. Compliance Filing Issues

Given the changes noted above, the Commission will direct parties to recalculate prices for elements incorporating those changes.

### A. HAI Model

The Department recommends that the Commission direct the parties to submit another compliance filing, reflecting the decisions set forth herein and in the Commission's May 3 Order. The Department further recommends that the Commission adopt this set of models and inputs, rather than merely adopt the resulting element prices. According to the Department, adopting the models and inputs would lay the foundation for producing new prices to reflect changing circumstances.

US West notes that the Telecommunications Act of 1996 provides for the Commission to establish specific prices for elements, not merely to adopt models or inputs.

The Commission will accommodate the wishes of all parties. With no party objecting, the Commission will direct the parties to submit another compliance filing, reflecting the decisions set forth herein and in the Commission's May 3 Order. The Commission will adopt the models and inputs as approved herein and in the Commission's May 3 Order, and the resulting prices.

#### 1. Tax Rate

The HAI Model generates UNE costs based on assumptions about operating costs. One operating cost is the local tax rate. The HAI Model was developed to apply in jurisdictions throughout the United States; as such, it assumes a national average tax rate unless provided with a different rate. However, Minnesota Statues § 237.12, subdivision 4, says:

> For telephone companies with more than 50,000 access lines, the prices for interconnection or network elements to be established by the commission in any pending or future proceeding shall be based on a forward-looking economic cost

[5] 47 C.F.R. § 51.319(b).

> methodology which shall include, but is not limited to, consideration of ... Minnesota tax rates....

Parties filed testimony noting the application of this statute to the current docket, and recommending the use of Minnesota-specific tax rates. Nevertheless, the ALJ did not include such a recommendation in his Report, the Commission did not make any mention of it in its May 3 Order adopting the Report, and the parties did not include it in their compliance filings.

The Department recommends that the Commission order the adjustment be made in the next compliance filing. The Department generally opposes making substantive changes during the compliance phase of the proceeding, but acknowledges the need to do so in this case due to the statutory mandate, and the record support. US West supports this recommendation.

AT&T/MCI oppose the recommendation as untimely, and not adequately supported by the record.

The Commission will adopt the recommendation. Since statute directs that element prices be established on the basis of Minnesota tax rates, the Commission will act accordingly.

### 2. Special Access Line Counts

The cost of loops represents a major component of the cost of providing landline telephone service. A "loop" typically consists of a pair of wires completing an electric circuit connecting a customer to a LEC's switch, which in turn is connected to the rest of the LEC's network. But some loops, called "special access lines," do not consist of a single pair of wires, and do not connect to the LEC's switch. They typically consist of digital service (DS) lines, which come in various sizes. DS1 lines consist of two pairs of wires, but can transmit the equivalent of 24 circuits. DS3 lines consist of two pairs of wires, but can transmit the equivalent of 672 circuits. Business customers may use such loops to provide a direct connection between computers at different locations.

The question arises whether to count a DS1 line as two lines or 24, and whether to count DS3 lines as two lines or as 672. The ALJ addressed this question as follows:

> 124. ....Some special access lines require a singe pair, but others, including all digital services, require two pairs....
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> 125. It is the Department's position that special access lines should be counted one way in the distribution plant and another way in the feeder plant. In the distribution plant, special access lines should be counted on a "pair-equivalent" basis. That is, two pairs of wires (a four-wire circuit) should be counted as two lines regardless of how many circuits may actually be provided for the facility. For example, a DS1 circuit is capable of providing up to 24 circuits or "lines" for customers but it only requires two pairs of wires in the distribution plant. Since only two pairs of wires need be installed in the distribution plant to provide a DS1 circuit, only the costs of installing those pairs should be included in total facilities costs and not the cost of installing a cable of 24 or more pairs or lines. On a pair equivalent method of calculation, there are about 170,000 special access lines in US West's territory in Minnesota.

> 126. In the feeder plant, however, a different counting method, a "circuit-equivalent" method, is acceptable. Special access lines provisioned over fiber-fed digital loop carrier do not require cable pairs. For example, to operate at full capacity, a DS1 circuit in the feeder plant requires that 24 channels of the fiber's total channel capacity be available to it. Unlike distribution plant where a two-pair cable may provide 24 "lines" of services, in the feeder plant, 24 channels are needed to provide 24 "lines" of services. On a circuit-equivalent method of calculation, there are about 616,000 special access lines in US West's territory in Minnesota.

The Report at ¶¶ 124-26 (citations omitted). The ALJ recommended the Department's position in his Report, and the Commission adopted the Report's recommendation in its May 3 Order.

US West subsequently reported, however, that it does not maintain records in a manner that would permit the implementation of the Commission's decision. The Commission must now devise a second-best solution.

**Regarding feeder plant:** In its 1996 Automated Reporting Management Information System (ARMIS) report filed with the FCC, US West acknowledged that special access lines provide it with the equivalent of 573,108 circuits in the feeder portion of its current Minnesota network.[6] Except as noted below, AT&T/MCI, the Department and US West each state positions approximately equal to this number.

**Regarding distribution plant:** The ALJ's Report identified the equivalent of approximately 170,000 special access circuits in US West's Minnesota service area. US West's records support this number. US West Supplemental Filing at 3. AT&T/MCI support 170,215. The Department supports 170,125, which derives from US West testimony.[7] For purposes of selecting an input into the HAI Model, the Commission finds the differences between these numbers insignificant. The Commission will approve the use of the median figure, 170,125.

But US West has three objections to these counts for feeder and distribution plant. First, US West argues that non-switched private lines should be excluded in this calculation. Second, US West argues that the special access lines used to connect interexchange carriers to US West's central offices should be excluded. Neither of these types of lines are used to provide "plain old telephone service," or would be provisioned as an unbundled loop, US West asserts. Finally, US West argues that all special access lines should be excluded because they do not fit within the definition of "access line" as set forth at Minnesota Statutes § 237.69, subdivision 5.

The ALJ and the Commission have already addressed the issue of whether to include special access lines, including private lines, in the line count. In generating the loop cost, the HAI Model assumes certain economies of scale; the more loops, the lower the cost of each loop. The Report, ¶ 124. The existence of special access lines influences US West's average operating costs regarding all lines. The statutory definition of "access line" cited by US West occurs in the context of

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[6]The Commission incorporated this data into the Universal Service cost study it submitted to the FCC in Docket No. P-999/M-97-909 In the Matter of Minnesota's Election to Conduct Its Own Forward-Looking Economic Cost Study to Determine the Appropriate Level Of Universal Service Support.

[7]Rebuttal Testimony of William L. Fitzsimmons, Exh. WLF-3 (March 23, 1998).

Minnesota's Telephone Assistance Plan for low-income subscribers; it has no bearing on the question of how to establish cost for US West's elements. Rather, the FCC provides a more compelling definition:

> Local Loop. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises.... The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops....

47 C.F.R. § 51.319(a)(1). In adopting this definition, the FCC explicitly stated that "we reject US West's argument that we should exclude from the definition the loop facilities that underlie private line and special access interconnection...." [8] Likewise, this Commission will decline US West's request to reconsider the matter.

For purposes of calculating the cost of US West's elements, the Commission will direct the parties to assume that US West's special access lines contribute the equivalent of 573,108 feeder lines, and 170,125 distribution lines, in Minnesota.

### B. Non-Recurring Cost Model

Just as it recommended regarding the HAI Model, the Department proposes that the Commission direct the parties to run the NRCM again using the latest inputs approved by the Commission, and adopt the resulting costs. With no party objecting, the Commission will adopt this proposal, and direct parties to submit a new model run within 30 days of this Order.

#### 1. Cost for Placing Manual Orders Before Electronic Ordering is Available

US West notes that the Commission's inputs to the NRCM assumed the availability of an electronic ordering system. But US West cannot yet process all orders electronically. Until such a process is in place, US West suggests that the Commission permit it to recover the higher cost of operating its current manual system, as calculated by US West's cost studies. AT&T/MCI, the CLEC Group and the Department all oppose US West's proposal.

The Commission notes that it launched this docket to establish the forward-looking costs for providing elements. The forward-looking cost of providing ordering services is the cost of processing those services electronically.[9] Permitting US West to recover a higher cost for processing orders until the electronic system is in place would burden competitors, and would give US West an undue incentive to delay the provision of electronic ordering. As the ALJ noted,

> US WEST cannot benefit from having failed to comply with the FCC Order [to develop a non-discriminatory ordering system].... CLECs are entitled to a rate determined through forward-looking and efficient systems.

The Report at ¶ 265. The Commission will decline to adopt US West's proposal.

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[8] Local Competition Third Report & Order at ¶ 177.

[9] "Obviously, an incumbent that provisions network resources electronically does not discharge its obligations under [47 U.S.C. § 251(c)(3)] by offering competing providers access that involves human intervention, such as facsimile-based ordering." Local Competition First Report and Order at ¶ 525 (footnotes omitted).

### 2. Cost for Placing Manual Orders After Electronic Ordering is Available

As noted above, US West alleges that it incurs additional costs to process orders submitted manually (e.g., by facsimile) rather than electronically. Currently those costs are unavoidable, because US West cannot yet process all orders electronically. Once US West implements its plan to be able to process all orders electronically, then US West could largely avoid the cost of manually processing orders.[10] Nevertheless, US West would continue to receive non-electronic orders if any CLEC would choose to submit them in that fashion. US West proposes that, under these circumstances, it be allowed to recover the actual cost of processing orders manually, based on its own cost model.

AT&T, Cady, the CLEC Group and the Department all oppose US West's proposal.

AT&T notes that the ALJ and the Commission rejected the use of US West's non-recurring cost model, and costs based on US West's manual order-processing system. Additionally, AT&T notes that US West failed to file a motion for reconsideration on this issue, so US West's proposal is untimely.

Cady echos many of AT&T's objections. Cady also disputes with particularity the manner in which US West generates its non-recurring costs for its manual order-processing system.

The CLEC Group, a group of competitive local exchange carriers, expresses concerns that the electronic system US West is developing will be prohibitively expensive for them to use. It notes that US West is able to process orders from interexchange carriers for a mere $5.

Both Cady and the Department argue that US West's proposal raises procedural concerns. Who would determine when US West's electronic ordering system was adequate, triggering US West's authority to begin charging the higher rate for processing non-electronic orders? The Department recommends that the Commission reject US West's proposal as premature. When US West believes that its electronic ordering system is adequate, then it may seek Commission approval to charge different rates for electronic and non-electronic order processing. The Commission would be able to make the relevant factual and policy determinations at that time.

The Commission finds this argument persuasive. Since US West's proposal is premature, the Commission will reserve judgment on this question. In the meantime, the Commission will decline to act on US West's proposal.

## C. Collocation Cost Model

In its May 3, 1999 Order, the Commission approved the AT&T/MCI model for establishing collocation costs. US West alleges that it offers four optional collocation services for which the AT&T/MCI model provides no price. US West named these services Fiber Splicing, Essential AC Power, Essential AC Power Feed, and Composite Clock. US West proposes that the Commission establish the price for these elements based on US West's cost studies, but using the inputs that the

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[10]Occasionally even electronically-submitted orders will require manual intervention. The Commission-approved price for processing orders incorporates the cost of processing some small percentage of the orders manually. The Report at ¶ 250 *et seq*.

Commission had approved.

Cady expresses concerns about US West's proposal. Cady questions whether some of these services are merely components of other elements, and whether the cost of these services is already recovered within the price of the elements of which they are a part.

The Commission need not resolve Cady's query in order to resolve this issue. To the extent that any of these four services are not included within other elements, or may be requested by a party that does not wish to purchase an element that encompasses it, then it is reasonable to establish a separate price for the service. And if the AT&T/MCI collocation costing model does not provide such a price, then the Commission must rely on the only other collocation costing model in the record: US West's. With the provisos stated herein, the Commission will approve US West's proposal to use its model, and the Commission's approved inputs, to price the four services. US West may charge the resulting rates to a CLEC that requests any such service, except to the extent that the CLEC requests the service as part of a larger Commission-approved element.

## ORDER

1. The Department's motion for reconsideration is granted.

2. US West's motion to strike modified Exhibit 638a is denied.

3. The HAI Model is approved for the purpose of establishing the recurring prices of –

   - Direct Trunked Transport (DS1 and DS3),
   - Entrance Facilities for Transport, and
   - 8xx Database Queries.

4. The nonrecurring price for loop conditioning shall be $0.

5. The nonrecurring price for ISDN extension technology shall be $0.

6. US West's cost studies are approved for provisionally establishing –

   - the recurring and non-recurring price of local switching for ISDN ports,
   - the per-call price of directory assistance,
   - the per-call price of operator services,
   - the per-call price of Complete-a-Call, and
   - the recurring and non-recurring price of multiplexing, except multiplexing ordered in conjunction with a US West transport channel.

   However, a CLEC may submit a letter to the Commission, with a copy to the Department, setting forth grounds for challenging a rate for the above-listed elements. The Commission may then direct US West to respond within 14 calendar days with evidence supporting the reasonableness of the rate in question. US West will have the option of accepting the CLEC's proposed rate. Otherwise, the Commission may set the matter for hearing under its expedited complaint procedures or otherwise. The Commission will endeavor to resolve the matter within two weeks.

7. The recurring price of two dark fibers shall be $.002 per foot per month.

8. The recurring price for two dark fibers with connections shall be $.004 per foot per month.

9. The non-recurring price for optional ISDN port features for local switching shall be $.24 per service order.

10. The recurring price for optional ISDN port features for local switching shall be $0.

11. AT&T/MCI shall provide an explanation of how they derived their non-recurring prices for –

- DS3 entrance facility and
- DS3 trunk for direct trunked transport,

and shall revise those prices, as necessary, to reflect this docket's Orders.

12. The price of a four-wire loop shall be equal to twice the price of a two-wire loop, minus the price of a network interface device.

1. Element prices shall reflect Minnesota tax rates.

2. Element prices shall reflect the assumption that US West has 573,108 feeder lines and 170,125 distribution lines.

3. US West's proposal that the Commission authorize the use of US West's proposed rate for processing orders manually is denied.

4. US West's cost studies are approved for the purpose of establishing the stand-alone price of –

- Fiber Splicing,
- Essential AC Power,
- Essential AC Power Feed and
- Composite Clock.

US West may charge the resulting rates to a CLEC that requests any such service, except to the extent that the CLEC requests the service as part of a larger Commission-approved element.

17. Parties shall recalculate element prices consistent with this docket's Orders, and shall make a compliance filing within 30 days of the effective date of this Order setting forth the list of elements and corresponding rates.

18. The Commission adopts the HAI Model and NRCM, and the inputs, as established and modified in this docket's Orders. The Commission also adopts the prices resulting from the models and inputs as set forth in the docket's Orders.

19. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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